

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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ROBERT R. DI TROLO
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W.D. OF TN, MEMPHIS

JOHNNY BEARD, FRED BAKER &
SONS ELECTRIC, INC.,

Plaintiffs,

v.

No. 04-2417-B/An

BENICORP INSURANCE COMPANY,

Defendant.

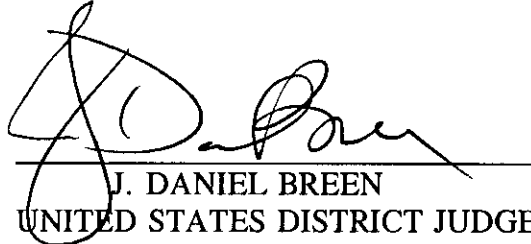
**ORDER DENYING AS MOOT DEFENDANT'S MOTION TO DISMISS
COUNTS TWO THROUGH ELEVEN OF PLAINTIFFS' COMPLAINT**

On May 19, 2005, the Defendant, Benicorp Insurance Company ("Benicorp"), filed a motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss with prejudice counts two through eleven of Plaintiffs' complaint. In an order entered February 25, 2005, this Court granted the same relief now sought by Defendant, that is its motion to dismiss counts two through eleven of Plaintiffs' complaint. Following the entry of the February order, the Plaintiffs moved to amend their complaint, which was granted. Whereupon Plaintiffs filed their amended complaint on April 21, 2005. Upon review of that amended complaint, the Court notes that it only contains two counts. Consequently, no complaint presently exists which would provide the basis for Defendant's current request for dismissal. The Court would note that the Defendant also filed on May 19, 2005, a motion to dismiss count two of Plaintiffs' amended complaint and all claims asserted by Plaintiff, Fred Baker & Sons Electric, Inc. Consequently, it appears that Benicorp may have refiled in error its additional motion to dismiss counts two through eleven of Plaintiffs' complaint.

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Accordingly, because the Court had previously granted Defendant's motion to dismiss counts two through eleven of the Plaintiffs' complaint, the motion seeking that same relief filed on May 19, 2005 (Docket Entry No. 58) is DENIED AS MOOT.

IT IS SO ORDERED this 24th day of May, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



Notice of Distribution

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Honorable J. Breen
US DISTRICT COURT